

No. 9/3/87-6Lab./870.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the Management of M/s (i) State Transport Controller, Haryana, Chandigarh; (ii) General Manager, Haryana Roadways Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 40 of 1985

between

SHRI BAL KISHAN, WORKMAN AND THE RESPONDENT-MANAGEMENT OF STATE
TRANSPORT CONTROLLER, HARYANA, CHANDIGARH; (ii) GENERAL MANAGER,
HARYANA ROADWAYS, FARIDABAD.

Present :—Shri Bhim Singh Yadav, for the workman.

Shri P. K. Sachdeva, for the respondent.

AWARD

This reference under Section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/116-84/470-76, dated 4th January, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Bal Kishan and the respondent-management of M/s. State Transport Controller, Haryana, Chandigarh; (ii) General Manager, Haryana Roadways, Faridabad. Accordingly it has been registered as Reference No. 4 of 1985.

2. In brief the facts of the case are that Bal Kishan was appointed on 10th June, 1970 as a Diesel Pump Attendant and his services were terminated on 28th April, 1983. His allegations are that he never remained absent from his duty but on that account his services have been illegally terminated. So far as procedure adopted by Enquiry Officer is concerned it has been alleged that he was not allowed to lead his evidence in his defence and further no opportunity was granted him to participate in the proceedings.

3. On notice, reply has been filed by the respondent. It is being pointed out that he was appointed on 1st June, 1970. The reply is that Bal Kishan was charge-sheeted for remaining wilfully absent and he had not replied the same, and thereafter General Manager, Haryana Roadways, Faridabad was appointed as an enquiry officer against him, and after recording the evidence he submitted his report holding Bal Kishan guilty of the charges framed against him, and he submitted his report. Further it has been contended that he was afforded full opportunity for his defence and he had cross-examined the witnesses examined by the respondent and after adopting due procedure his services have been terminated.

4. On the pleadings of the parties, my learned predecessor had framed the following material issues on 10th September, 1985 :—

- (i) Whether enquiry was fair and proper ?
- (ii) As per reference ?

5. In support of the Charge-sheet, Clerks, MW-1 and MW-2 have been examined. Bal Kishan has also appeared as WW-1. I have heard the parties as represented above. The findings issue-wise are as below :—

6. Issue No. 1 and 2.—Both the issues are inter-linked and as such the same are to be disposed of together. This Bal Kishan was charge-sheeted by the respondent,—*vide* its Memo, dated 11th April, 1981 which is now Ex. M-2. It was alleged that he was absented from his duties on the following dates :—

24th June, 1979 to 26th June, 1979

17th July, 1979 to 20th July, 1979

2nd August, 1979 to 3rd August, 1979

14th August, 1979 to 19th August, 1979

28th August, 1979 to 29th August, 1979

1st September, 1979 to 11th September, 1979.

1st October, 1979 to 12th October, 1979

27th October, 1979 to 30th October, 1979

It was alleged that he had absented himself wilfully and un-authorisedly. He had not submitted his explanation of the said charge-sheet and accordingly,—*vide* order, dated 21st December 1981,—*vide* Ex. M-3 General Manager, Haryana Roadways, Faridabad was appointed as an enquiry officer by an the State Transport Controller, Haryana. He had recorded statement Ex. M-4 of Station Supdt. and statement of Bal Kishan was also recorded by him. Thereafter he had submitted his report Ex. M-5 holding him guilty of the said charges and after considering the same show-cause notice Ex. M-6 was served on Bal Kishan and he was directed to submit his reply and then finally,—*vide* Ex. M-7, dated 28th April, 1983 his services were terminated.

7. The main allegations of 'Bal Kishan' are that he was not allowed to cross-examine the witnesses examined by the respondent and moreover no opportunity was afforded to him to lead his evidence. After going through the file, I do not find any substance in this contention. Shri Roshan Lal, examined by the respondent,—*vide* Ex. M-4 was cross-examined by 'Bal Kishan' himself. Further it is revealed from the enquiry report Ex. M-5 that he had not allowed any evidence though reasonable opportunity was afforded to him to do so. It appears that he himself is at fault since he did not submit his explanation to the charge-sheet M-2 and show cause notice M-6 and for that he has not sent explanation.

8. So far as oral evidence is concerned it has been alleged that the same is not based on any record and as such charge of absence from duty has not been proved. Again this allegation appears to be without any force. The statement of allegations is containing the details of period from duty is M-2 and is he did not submit any explanation thereof. It has been submitted by the Station Supdt. that he had remained absent during the alleged period. It was submitted by him that he had been availing rest leave to substantiate the same. No evidence has been led by Bal Kishan who has deposed that he had been on rest days and he was wrongly marked as absent from duty. In this manner the evidence led by the respondent is trustworthy to prove his absence from duty which is being admitted by the workman in a indirect manner.

9. The concluding para could be of punishment in this case. Bal Kishan was appointed in 1970 and on the file no other adverse material has been brought except that the same now in dispute. I have gone through very carefully the period of his absence mentioned in the statement of allegations and find there from that his period of absence had not been a long one. No evidence has been led to prove that due to his absence petrol/diesel unit could not be operated upon. There is also no evidence that he had left his job and then had remained absent. Under these circumstances of the case, I feel that order of termination passed in this case is a harsh one and end of justice would be served if light punishment is awarded to him. The order of termination is dated 28th April, 1983 and it is now of more than 3 years as being without any job and he has suffered a lot. In my opinion he could not be allowed to draw his back wages and without the same, must be reinstated to his job with continuity of service.

Accordingly I modify the order of termination of his services and convert the same to reinstate him to his job with continuity of service but without any back wages.

The reference is accordingly disposed of.

Dated the 21st January, 1987.

A. S. CHALIA,

Presiding Officer,

Labour Court, Faridabad.

Endstt. No. 91, dated the 28th January, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Chandigarh as required under Section 15 of the I. D. Act.

A. S. CHALIA,

Presiding Officer,

Labour Court, Faridabad.